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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th June 2007

No.7714-1i/1(SS)-46/2000/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 12th April 2007 in I.D. Case No. 26 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Regional Director, Indira Gandhi National Open University Regional Centre, Bhubaneswar represented by (1) Regional Director, Indira Gandhi Open University C/1 Industrial Area, Bhubaneswar-751013, (2) The Co-ordinator, IGNOU Study Centre, Government College, Rourkela and its workman Shri Radhashyam Patsani, S.N. Patnaik Colony, Uditnagar, Rourkela-769012, Dist: Sundargarh was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 26 OF 2003

The 12th April 2007

Present :

Shri P.K.Mohapatro, L.L.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of
Regional Director, Indira Gandhi National
Open University Regional Centre,
Bhubaneswar represented by

1. The Regional Director,
Indira Gandhi Open University,
C/1 Industrial Area,
Bhubaneswar-751013 and

2. The Co-ordinator,
IGNOU Study Centre,
Government College,
Rourkela-4.

.. First-party—Management

AND

Its workman Shri Radheshyam Patsani,
S.N. Patnaik Colony, Uditnagar,
Rourkela-769012, Dist : Sundargarh

.. Second-party—Workman

Appearances :

For the First-party—Management

.. Shri R.K. Bose, Advocate

For the Second-party—Workman

.. Shri G. Pujari, Advocate

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour and Employment Department U/s. 10 and 12 of the Industrial Disputes Act, 1947 vide Memo. No. 5703(6), dated the 11th June 2003 for adjudication of the dispute scheduled below :—

“Whether the action of the Management of Indira Gandhi National Open University Study Centre, Government College, Rourkela-4 in terminating the services of Shri Radheshyam Patsani by way of refusal of Employment with effect from 11th January 2000 is legal and/or justified? If not, to what relief Shri Patsani is entitled ?”

2. The workman named above was appointed by the Management as “Attendant” and from 21st October 1989 he (workman) reported for duty under the Management. After a long lapse of time, with the sole intention to remove him from service the Management had decided to continue with the employees of the host institution and issued a letter dated the 8th November 1994. The workman had challenged the same before the Hon’ble High Court vide OJC No. 7821/94 and after hearing the parties, the following order was passed by the Hon’ble Court on 3rd August 1995.

“In the peculiar circumstances, keeping in view the engagement of the petitioner for about six years, his services may be availed so long as there is availability of

work. This would depend on the correctness of the assertion made by the petitioner that he is working as attendant for long hour”.

Thereafter, the workman had also presented a complaint petition before the Deputy Labour Commissioner, Rourkela stating that the Management is not giving the minimum wages fixed by the Government of Orissa. Then the Assistant Labour Officer, Rourkela filed a Criminal Case bearing No. 2 cc 410/99 in the Court of the Sub-Divisional Judicial Magistrate under the Minimum Wages Act, 1948. The Management took exception to the above action of the workman and as a first step they changed the working hour of the workman vide notice dated the 13th October 1999 without complying the restrictions available under the I.D. Act, 1947 (here-in-after referred as the Act). Then, with effect from 11th January 2000 vide letter No. 5902, dated the 10th January 2000 the Management in order to satisfy their grudge summarily terminated the services of the workman and even the principles of natural justice were not complied before removing him. Thereafter the services of the other persons were taken up which is contrary to the direction of the Hon'ble High Court. The conciliation proceeding also failed. Consequently, the dispute was referred to this Court for adjudication. According to him, the termination of his service by the Management is illegal, unjustified and in utter violation of the principles of natural justice. He has prayed for reinstatement in service with full back wages.

3. In the written statement, the Management took the plea that in the year 1987 the workman was appointed as an “Attendant” with effect from 21st October 1989 for a particular period and such appointment continued till 31st December 1999 by virtue of official orders and each order issued in support of the workman relates to a particular term. It is also the case of the Management that the last appointment order which was issued to the workman remained valid from 1st January 1999 to 31st December 1999 and thereafter his engagement order was not further renewed. To sum up, according to the Management, such non-renewal of contract of employment cannot be said to be an illegal retrenchment. Further according to the Management in such a situation compliance of section of 25-F of the I.D. Act is not necessary. To sum up, it is the case of the Management that the workman is not entitled to be reinstated in service as his retrenchment was taken up on the basis of non-renewal of contract of employment.

4. The workman has filed a rejoinder. According to him, the nature of job wherein he was appointed was a permanent one and because of his continuance in service for such a long period it cannot be said as a contractual employment. In it, the workman has taken the stand the Management has come up with false plea to get rid of him.

5. By taking the note of the pleadings of the parties, the following issues are framed for adjudication in this case.

ISSUES

- (i) "Whether the reference is maintainable in its present form and whether the Government of Orissa can be treated as the "Appropriate Government" as visualized I.D. Act or whether the Central Government is the "Appropriate Government" for raising an Industrial Dispute in relation to the workman?"
- (ii) "Whether the action of the Management of Indira Gandhi National Open University Study Centre, Government College, Rourkela-4 in terminating the services of Shri Radheshyam Patsani by way of refusal of employment with effect from 11th January 2000 is legal and justified?"
- (iii) To what relief the workman Shri Patsani is entitled ?"

6. The workman is only examined from his side and he has filed 16 documents to buttress his claim. Those are marked Ext.1 to 16. I will deal with the documents proved from the side of the workman as and when required.

The Management side is represented by Shri Rusi Kumar Ratha, Assistant Registrar. He is only examined in this case and to suffice the claim of the Management Exts.A to G are filed. The documents filed by the Management will be referred in the body of this award as and when relevant.

FINDINGS

7. Issue No. i :- With the consent of the parties the maintainability of this case and whether the State Government is the appropriate Government (issue No.i) was taken up as a preliminary issue. The said issue was answered in support of the workman vide order dated the 23rd June 2006. It was held in that order that the Industrial Dispute raised by the workman is fit for reference by the Government of Orissa to this Court and no prejudice was caused to the Management by such action of the Government. So there is no need to discuss the pros and cons of issue No.i in this award. My order dated the 23rd June 2006 may be treated as a part of this award.

8. Issue No. ii :- Under the above issue it is to be decided as to whether the action of the Management in terminating the services of the workman by way of refusal of employment with effect from 11th January 2000 is legal and/or justified. It is the admitted case of the Management that the workman was appointed as an "Attendant" under it with effect from 21st October 1989 and the same continued till 31st December 1999, by issuing various official orders and each order specifies a specific period. The workman has filed

the first appointment order which is marked as Ext.1 in this case. On perusal of Ext. 1 it is forthcoming that the appointment was for the post of part time attendant with an allowance of Rs. 350/- per month. The workman has filed another appointment order dated 18th January 1995 (Ext.2) which speaks of his appointment as a part time "long hour attendant". So admittedly the workman reported for duty from 21st October 1989. But according to the workman his official appointment was for the post of "Attendant" (long hour) and in this connection the Management took the plea that it was for the post of "Attendant" for a particular period and it is not an appointment for the post of "Attendant" (long hour). It is also the admitted position that the appointment of the workman was extended from time to time by virtue of orders and in this case those are marked as Ext. B, C, D and E from the side of the Management and then the period of appointment of the workman which was extended up to 31st December 2000 was not renewed and in this connection the Co-ordinator of the Management issued a letter to the workman (Ext.6). By virtue of Ext.6, Co-ordinator had advised the workman not to attend the office with effect from 11th January 2001. Thereafter, the dispute between the parties arose and this Industrial Dispute was referred to this Court.

9. Admittedly, the Indira Gandhi National Open University (here-in-after referred as IGNOU) is a creation of parliament through IGNOU Act, 1985. There is no dispute with regard to the status and functioning of IGNOU. At the time of argument the learned counsel appearing for the Management has submitted that all the study centres in this Country are manned by part time staff members drawn from the existing staff of the host institution. Further according to the Management in the year 1987 a study centre was established in the Government College, Rourkela and a part time Co-ordinator was also appointed on the basis of the recommendation of the Principal of the host institution. At the time of argument emphasis is given to the fact that the appointment of the workman was not done in consonance with the stipulations of IGNOU as he was not a regular employee of the host institution and the same is congenial to conclude that his very initial appointment was not in consonance with IGNOU Specification. In my opinion at this belated stage such an argument is not acceptable. Admittedly, the workman was appointed under the Management by virtue of an appointment order (Ext.1) with an allowance of Rs. 350/- per month. It is also forthcoming from Ext.2 that after some years he was appointed as long hour attendant with an allowance of Rs.350/- per month. It is also not under challenges that each appointment order of the workman was for a specified period and right from 1989 it continued till 31st December 1999 after which it was not

renewed. So for long 10 years the workman was allowed to continue in his post, but on each occasion, the Management side had issued an appointment order specifying the period. But admittedly there is no break of service and it continued up till 31st December 1999. There are materials on record to conclude that due to some actions of the workman there was bickering between them and the Management side issued a letter dated the 8th November 1994 to the workman which was challenged by him in the Hon'ble High Court of Orissa vide OJC No. 7821/94. Our Hon'ble Court vide order dated the 3rd August 1995 have directed the Management to avail the services of the workman so long as there is availability of work. Then the workman was allowed to continue and during the interim period, he filed a complaint before the Deputy Labour Commissioner, Rourkela that the Management is not complying the stipulations available under the Minimum Wage Act. It is also forthcoming from the record that a criminal case was launched against the Management under the Minimum Wages Act and then the other rigid actions of the Management like changing of working hour and termination of services with effect from 11th January 2000 came up. After taking note of the above position it can be safely said that the rigid actions of the Management came into existence after the wrangle as mentioned above. There is nothing concrete from the side of the Management to show that the service of the workman was not necessary as a result the termination order was issued. No good ground is shown as to why all of a sudden such a rigorous action was taken against the workman. As such it can be safely said that the periodical appointment orders were issued in favour of the workman to show that his service is contractual in nature though in reality the same is not of that type. Further more from the nature of duties performed by the workman it can also be said that his job is permanent in nature though it was given the complexion of contractual appointment in each renewal letter. The submission of the learned counsel for the workman that the Management side had adopted such tactical procedures to frustrate the claim of the workman to become regular sounds probable. The plea of the Management that there are dearth of good grounds as to why the workman was appointed under the Management though he does not belong to the host institution and that his initial appointment was not legal cannot be taken up by this Court in a summary proceeding like the present one. Rather from the documents and from the oral evidence of the workman it can be safely said that he was initially appointed as an "Attendant" with an allowance of Rs. 350/- per month which is meant for the post of Attendant (long hour) and he continued in that post uptill the end of 1999 and then without good cause he was removed from service. In view of the above position the right accrued

to the workman cannot be taken away by taking note of the exceptions available in Clause (bb) of Section 2(oo) of the Act. There are catena of judicial pronouncements that the provisions of Section 2(oo) (bb) of the I.D. Act are to be construed benevolently in favour of the workman and if a workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall u/s. 2(oo) (bb) of the Act.

10. Further more it is forthcoming from the evidence of the workman and also from the body of Ext. 6 that his term extended upto 31st December 2000 was not renewed by the Regional Director and therefore he was advised not to attend the office with effect from 11th January 2000. In my opinion the two paragraphs available in Ext. 6 are inconsistent to each other. If it was not renewed after 31st December 2000 then actions should have been taken accordingly. But surprisingly the workman was asked to work till 10th January 2000 and then was advised not to work in the study centre with effect from 11th January 2000. So after the period as stipulated in his appointment order there was work under the Management, as a result, he was asked to work till 10th January 2000 and from the last portion of Ext.6 it is well forthcoming that the workman had worked till 10th January 2000. So there is every reason to renew his contract and by taking note of the position which was prevailing by then it can be safely said that the intention of the Management was not good and for that reason, the contract was not renewed. In the premises the right accrued to the workman cannot be taken away by employing the exception clause and in my opinion it would be treated as a clear case of retrenchment.

11. Admittedly before terminating the services of the workman the Management had not taken up any enquiry and even no challenge was filed against him. The statutory compensation was also not paid to him. According to the Management witness, after removing the workman they have taken some part time employees. The same is congenial to conclude that after terminating the workman the Management recruited fresh employees. As such, it can be safely said that the termination is illegal and in violation of principles of natural justice. So the above issue is answered in support of the workman and against the Management.

12. Issue No. iii:- As per law where the retrenchment order is held to be invalid, then it is imperative for the Labour Court to award relief of reinstatement with full back wages and it has no discretion to award any other relief. The workman was removed from service without any good cause and I have already arrived into a conclusion that it is a case of retrenchment without compliance of the statutory requirement. The monthly

allowance which the Management was paying to the workman was too less. Due to the wrong action of the Management, the workman was debarred from performing his duties. So, the theory of no work no pay will not apply in case of the workman. Though, he has not worked during the intervening period, there is no reason to prune his allowance. So the workman is entitled for reinstatement in service with full back wages. Hence the following award.

AWARD

The reference is answered on contest against the Management and in support of the workman, however, in the circumstance there is not order pertaining to cost. The action of the Management of Indira Gandhi National Open University Study Centre, Government College, Rourkela-4 in terminating the services of Shri Radheshyam Patsani by way of refusal of employment with effect from 11th January 2000 is held to be not legal and justified and he is entitled for reinstatement in service with full back wages. The Management is directed to reinstate the workman in service with effect from 1st July 2007. The Management is also directed to pay the back wages to the workman within 3 months hence.

Dictated and corrected by me

P.K. Mohapatro
Dt. 12-04-2007
Presiding Officer,
Labour Court,
Sambalpur.

P.K. Mohapatro
Dt. 12-04-2007
Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

N.C.RAY

Under-Secretary to Government